

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

-----X	:	
AMBAC ASSURANCE CORPORATION,	:	
	:	
Plaintiff,	:	
	:	
-against-	:	Civil No. 3:20-cv-01094 (PAD)
	:	
AUTOPISTAS METROPOLITANAS DE	:	
PUERTO RICO, LLC,	:	
	:	
Defendant.	:	
-----X	:	

**MOTION TO REASSIGN CASE TO JUDGE LAURA TAYLOR SWAIN
AND TO STAY THE PROCEEDINGS PENDING REASSIGNMENT**

To the Honorable United States District Court Judge Pedro A. Delgado-Hernández:

Pursuant to Local Rule 3A, Defendant Autopistas Metropolitanas de Puerto Rico, LLC (“Defendant”) respectfully submits this motion (the “Motion”) to reassign the above-captioned action (the “Action”) to the Honorable Laura Taylor Swain as a related case to a pending proceeding under Title III of the *Puerto Rico Oversight, Management, and Economic Stability Act* (“PROMESA”), 48 U.S.C. §§ 2101-2241. This Action warrants reassignment in order to fulfill PROMESA’s purposes, to serve the interests of the judicial economy, and to avoid the risk of inconsistent rulings. In support of this Motion, Defendant¹ states as follows:

PRELIMINARY STATEMENT

1. In 2016, Congress enacted PROMESA in light of the unprecedented fiscal crisis in the Commonwealth of Puerto Rico (the “Commonwealth”). *See* 48 U.S.C. § 2101 *et seq.*

¹ Autopistas Metropolitanas de Puerto Rico reserves all of its rights to move, answer, or otherwise respond to the Complaint filed in this action in accordance with the Federal Rules of Civil Procedure.

2. PROMESA established the Financial Oversight and Management Board for Puerto Rico (“FOMB”), whose purpose is to provide a method for Puerto Rico to achieve fiscal responsibility and to obtain access to capital markets. PROMESA §§ 101(a), 101(b)(1).

3. Upon the satisfaction of certain conditions, PROMESA empowers the FOMB to petition, as representative of the Commonwealth and its instrumentalities, for adjustment of debts under Title III of PROMESA. *Id.* §§ 302, 304, 315(b). To date, the FOMB has filed six such Title III petitions (the “Title III Proceedings”) in the District of Puerto Rico as representative of the respective debtors in those proceedings.

4. On May 3, 2017, the FOMB filed a petition under Title III of PROMESA on behalf of the Commonwealth (Case No. 17-BK-3283-LTS) (the “Commonwealth Proceeding”). On May 21, 2017, the FOMB commenced a Title III Proceeding on behalf of the Puerto Rico Highways and Transportation Authority (Case No. 17-BK-3567-LTS) (the “PRHTA Proceeding”).

5. The Puerto Rico Highways and Transportation Authority (“PRHTA”) oversees the construction of highways and other transportation systems in Puerto Rico. *See* 9 L.P.R.A. § 2002 (the “PRHTA Enabling Act”). Under the PRHTA Enabling Act, PRHTA has the power to “make contracts and to execute all instruments necessary or incidental in the exercise of any of its powers[.]” 9 L.P.R.A. § 2004(g), (h), (l).

6. This Action involves an amendment to a certain concession agreement between PRHTA and Defendant (the “Concession Agreement”), which was executed on April 19, 2016 (the “Amendment”). Compl. ¶ 3. Among other things, the Amendment extended the term of the Concession Agreement (the “Extension Period”) and provided for an increase of Defendant’s toll revenue sharing percentage (the “Toll Share Increase”) in exchange for Defendant’s paying \$115

million to PRHTA (the “Lump Sum Payment”) and the provision of certain other valuable consideration.

7. In the Action, Plaintiff seeks the rescission of the Amendment under the theory that Metropistas purportedly knew, disregarded and/or should have foreseen that the Commonwealth would divert the Lump Sum Payment away from PRHTA (the “Rescission Claim”). Complaint ¶¶ 6, 40, 49, 52, 56, 58, 70-80. If Plaintiff is successful in its Rescission Claim, the Amendment would be unwound, and PRHTA and Metropistas would be forced to revert to their original positions. *See Municipio de Ponce v. Vidal*, 65 D.P.R. 370, 381, 1945 WL 6003, at *7 (P.R. Nov. 15, 1945).

8. Further, Plaintiff is also seeking “a declaration . . . that it has a valid, continuing lien on toll revenues collected by Metropistas for its own account that are generated by” the toll roads during the Extension Period and pursuant to the Toll Share Increase (the “Declaratory Judgment Claim”). Complaint ¶¶ 91-95.

9. Both the Concession Agreement and the Amendment were entered into by PRHTA pursuant to its statutory authority to make contracts. As such, the Concession Agreement and Amendment are PRHTA’s property, and PRHTA’s rights under the contract are themselves property of a Title III debtor. *See In re Santiago*, 563 B.R. 457, 472 (Bankr. D.P.R. 2017).

10. Pursuant to 48 U.S.C. § 2168, the Chief Justice of the United States designated Judge Swain to preside over the Commonwealth Proceeding in the District of Puerto Rico. Further, the Chief Judge of the United States Court of Appeals for the First Circuit also designated Judge Swain to preside over the PRHTA Proceeding in the District of Puerto Rico.

11. In addition, Judge Swain is also presiding over all other Title III Proceedings and related adversary proceedings. On January 16, 2020, the FOMB commenced an adversary proceeding (the “FOMB Action”) against Plaintiff in connection with the PRHTA Proceeding claiming, among other things, that Plaintiff does not have a lien on any toll revenues levied by PRHTA—the same premise at issue in the Declaratory Judgment Claim. *Fin. Oversight & Mgmt. Bd. for P.R. v. Ambac Assurance Corp.*, Adv. P. No. 20-00007 (LTS), Dkt. No. 1 (Jan. 16, 2020) (the “FOMB Complaint”).

12. This Action should be reassigned to Judge Swain in the interest of justice, to ensure judicial efficiency in this Action, the PRHTA Proceeding, and the Commonwealth proceeding (to the extent applicable). This case is inextricably related to the PRHTA and Commonwealth Proceeding on issues surrounding the Rescission Claim, including (i) the possible interference with PRHTA’s property rights under the Concession Agreement and the Amendment, and (ii) the existence, and effect, of any purported interference or diversion of the Lump Sum Payment made by the Commonwealth against PRHTA, among others.

13. Furthermore, Judge Swain should also preside over this Action in order avoid the risk of inconsistent judgment with the FOMB Action, particularly with respect to the Declaratory Judgment Claim. Indeed, Plaintiff itself designated the case as related to the PRHTA Proceeding pending before Judge Swain, *see* Civil Cover Sheet, Section VIII, and pleaded subject-matter jurisdiction on the basis of this case being “related to” a bankruptcy petition. 28 U.S.C. § 1334. *See* Compl. ¶ 10. A true and correct copy of the Civil Cover Sheet is attached hereto as Exhibit B.

ARGUMENT

14. Reassignment of this Action to Judge Swain will promote judicial efficiency and save substantial judicial effort by avoiding piecemeal and potentially conflicting resolution regarding PRHTA's interest in its contract with Defendant and/or the Commonwealth's interest regarding the Lump Sum Payment. The risk of a potentially conflicting resolution is particularly acute with respect to the Declaratory Judgment Claim, as the subject thereof—whether Plaintiff has a valid lien on toll revenues—is currently at issue in the FOMB Action pending before Judge Swain. *See* FOMB Complaint.

15. PROMESA contemplates a single forum to decide issues relating to the Title III Proceedings. It provides a mechanism for a single judge to be designated to preside over a Title III proceeding for a territory or its instrumentalities, PROMESA § 308, and provides for the joint administration of affiliated cases, *id.* § 304(g).

16. PROMESA plainly contemplates the consolidation of any litigation “related to” the Title III Proceedings, both across federal district courts and within the District of Puerto Rico, before a single judge. Cases that arise under or relate to a Title III Proceeding are required to be transferred to this District. *Id.* § 306(d)(3). An assignment of a related action to another District Judge therefore undermines the purpose of § 306(d)(3). PROMESA also contemplates bringing related litigation directly as adversary proceedings under the Federal Rules of Bankruptcy Procedure, which apply to all cases “arising in or related to” Title III cases, *id.* § 310, and which permit claims seeking declaratory or injunctive relief, *see* Fed. R. Bankr. P. 7001(7).

17. Moreover, pursuant to the Local Rules for this District, cases are related if they “involve the same property, transaction, or event.” Local Rule 3A(d)(2). That is clearly the case

here, since Plaintiff, through the Action, seeks to rescind the extension of the Concession Agreement through the Extension Period and Toll Share Increase effected through the Amendment, which is a contract between PRHTA and Defendant. *See* Compl. ¶ 3.

18. The PRHTA's rights under the Concession Agreement and Amendment are property of PRHTA, a Title III debtor, and are thus also the subject of the PRHTA Proceeding before Judge Swain. In addition, any dispute the Plaintiff may have regarding the Commonwealth's improper interference with the Lump Sum Payment would be the subject of the Commonwealth Proceeding.

19. Plaintiff will suffer no prejudice from reassignment to Judge Swain, as the transfer of the case to the court adjudicating the PRHTA and Commonwealth Proceedings will enable Plaintiff's claims to be adjudicated in a coordinated and efficient manner.

20. For the foregoing reasons, Defendant respectfully requests that the Court (i) reassign this action to Judge Swain pursuant to Local Rule 3A and section 306(d)(3) of PROMESA, and (ii) upon the granting of this Motion, that this Action be administratively closed and re-docketed as an adversary proceeding under the auspices of the PRHTA Proceeding.

21. Finally, in order to further promote judicial efficiency and safeguard this Court's resources, Defendant respectfully requests that the instant Action be stayed in its entirety (including the running and/or lapse of any applicable terms, deadlines, or due dates) pending adjudication of this Motion, the re-assignment of this case, and the ultimate acceptance by Judge Swain, so as to avoid the possibility of inconsistent rulings and/or piecemeal adjudication of overlapping issues between this Action, the Commonwealth and PRHTA Proceedings, and/or the FOMB Action or the FOMB Complaint. A proposed order is attached hereto as Exhibit A.

RESERVATION OF RIGHTS

22. Notwithstanding Defendant's appearance in this Action and the filing of this motion, Defendant reserves all rights to argue, in this Court, the Commonwealth Proceeding and/or the PRHTA Proceeding that the filing of the Complaint and the commencement of the Action violates the automatic stay set forth in section 362 of the Bankruptcy Code and that, as a result, the Complaint and the Action are *void ab initio*. Defendant's appearance in this Action and the filing of this motion is not, and should not be deemed, a consent to the validity of the Complaint or to the jurisdiction of the Court, a waiver of any objections or arguments that Defendant may assert in this Action (including with respect to jurisdiction), or a concession that the commencement of the Action is permissible under section 362 of the Bankruptcy Code.

CONCLUSION

WHEREFORE, Defendant requests and prays that this Court (i) reassign this Action to Judge Laura Taylor Swain pursuant to Local Rule 3A and section 306(d)(3) of PROMESA; (ii) that this Action be administratively closed and re-docketed as an adversary proceeding under the auspices of the PRHTA Proceeding; (iii) that the instant Action be stayed in its entirety (including the running and/or lapse of any applicable terms, deadlines, or due dates) pending adjudication of this Motion, the re-assignment of this case, and the ultimate acceptance by Judge Swain; and for the entry of any other relief as may applicable at law or equity.

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RESPECTFULLY SUBMITTED.

Dated: March 2, 2020

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*Attorneys for Defendant Autopistas Metropolitanas
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EXHIBIT A

Proposed Order

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

	X	
AMBAC ASSURANCE CORPORATION,	:	
	:	
Plaintiff,	:	
	:	
-against-	:	Civil No. 3:20-cv-01094 (PAD)
AUTOPISTAS METROPOLITANAS DE	:	
PUERTO RICO, LLC,	:	
	:	
Defendant.	:	
	:	
	X	

**ORDER REASSIGNING CASE TO JUDGE LAURA TAYLOR SWAIN
AND STAYING ALL PROCEEDINGS PENDING CONSENT THERETO**

Upon Defendant’s motion (the “Motion”)¹ for entry of an order (this “Order”) reassigning this case to the Hon. Laura Taylor Swain and staying the proceedings pending reassignment, and this Court having reviewed the Motion and having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefore, it is **HEREBY ORDERED THAT:**

1. The Motion is granted as set forth herein, pending consent to the reassignment by Judge Swain in accordance with Local Rule 3A(b).
2. All proceedings before this Court in this case are hereby stayed pending the approval of Judge Swain.

¹ Capitalized terms that are not defined herein shall have the meanings ascribed to such terms in the Motion.

3. The clerk of the Court is hereby directed to administratively close the above captioned proceeding and re-docket as an adversary proceeding under the auspices of the PRHTA Proceeding.

4. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

5. Metropistas is authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

6. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of the Order.

Dated: _____, 2020
San Juan, Puerto Rico

HONORABLE PEDRO DELGADO HERNÁNDEZ
UNITED STATES DISTRICT JUDGE

EXHIBIT B

CIVIL COVER SHEET

JS 44 (Rev. 09/19)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Ambac Assurance Corporation

(b) County of Residence of First Listed Plaintiff

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

See attached.

DEFENDANTS

Autopistas Metropolitanas de Puerto Rico, LLC

County of Residence of First Listed Defendant San Juan

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability PERSONAL PROPERTY <input checked="" type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. 1334

Brief description of cause:
Fraudulent transaction from Puerto Rico Highways and Transportation Authority to Metropistas.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE Judge Laura Taylor Swain DOCKET NUMBER No. 17-BK-3283 (LTS)

DATE 02/19/2020 SIGNATURE OF ATTORNEY OF RECORD /s/ Roberto A. Camara-Fuentes

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE